

APPEAL NO. 033030  
FILED DECEMBER 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 11, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) did not sustain a compensable lumbar injury on \_\_\_\_\_; that the employer had actual knowledge of the alleged injury incident and that the respondent/cross-appellant (carrier) is not relieved of liability because of the claimant's failure to timely notify the employer; and that the claimant does not have disability because he did not sustain a compensable injury. The claimant appealed the hearing officer's injury and disability determinations based on sufficiency of the evidence grounds. The carrier filed a conditional cross-appeal, arguing that the hearing officer's notice determination is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Both parties responded to the other party's appeal.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). In the instant case, although the hearing officer was persuaded by the evidence that the claimant fell to the ground while in the course and scope of his employment on \_\_\_\_\_, the hearing officer was not persuaded that the claimant sustained an injury, damage or harm to the physical structure of his body, as a result of the fall. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). With no compensable injury found, there is no basis upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011 (16). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). After reviewing the record, we find sufficient evidence to support the injury and disability determinations.

Whether the claimant timely reported his injury to the employer is a question of fact for the hearing officer. The 1989 Act generally requires that an injured employee or

person acting on the employee's behalf notify the employer of the injury not later than 30 days after the injury occurred. Section 409.001. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ). In the instant case, the hearing officer found that the employer had actual knowledge of the \_\_\_\_\_, falling incident at least by December 24, 2002, because the employer investigated the incident on that date. In view of the evidence presented, the hearing officer's notice determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Chris Cowan  
Appeals Judge